

**Second Joint Status Report under the
U.S.-Japan Enhanced Initiative on Deregulation
and Competition Policy
May 3, 1999**

Fact Sheet

“We realize that unless we adopt a more flexible economy driven by the market,
Japan is doomed to economic and technological decline.”

Prime Minister Keizo Obuchi
April 29, 1999, New York Times

OVERVIEW

Deregulation of the transportation, telecommunications, energy, financial, aviation and other sectors in the United States since the mid-1970s’ has fundamentally repositioned our economy to be the most competitive economy in the world today. Deregulation means changing the way government operates, including the ways it regulates and provides incentives to investment. Support for pro-competitive practices is essential to secure new investment, new technology development, entrepreneurship and the creation of new economic opportunities that Japan needs to turn around its economy and restore growth. As Prime Minister Obuchi recently observed of the challenge before Japan today, “We realize that unless we adopt a more flexible economy driven by the market, Japan is doomed to economic and technological decline.”

The U.S.- Japan Enhanced Initiative launched in June 1997 in Denver created a bilateral process to address regulatory and anti-competitive barriers for both foreign and domestic firms in Japan. In May 1998 in Birmingham, England the United States and Japan announced a First Joint Status Report under the Enhanced Initiative detailing a package of measures to substantially deregulate Japan’s telecommunications, housing, medical devices, pharmaceuticals, distribution, and financial services sectors. Since Birmingham, teams of American government experts overseen by Deputy United States Trade Representative Richard Fisher have met throughout the year with Japanese experts from a number of Japanese Ministries coordinated by Deputy Foreign Affairs Minister Koichi Haraguchi to further the process and push the envelope of Japanese deregulation and restructuring.

New deregulation measures unveiled today will substantially expand last year’s program in these sectors, advance deregulation of Japan’s energy sector, and address cross-cutting competition policy and transparency issues. The Initiative is an important component of the Administration’s strategy to further open the Japanese market and is designed to complement ongoing bilateral

enforcement efforts with respect to such issues as steel, insurance, flat glass, autos & auto parts, government procurement; and our multilateral agenda in APEC and the WTO to reduce Japanese trade barriers. Recognizing the importance of continued deregulation in Japan, both governments also agreed to continue their efforts under the Enhanced Initiative for a third year.

The accomplishments achieved during the second year under the Enhanced Initiative are highlighted below.

TELECOMMUNICATIONS

NTT Interconnection

Problem: One of our major priorities has been encouraging Japan to implement effective rules enabling new entrants in the telecommunications market to connect their customers to the other ninety-nine percent of the market currently controlled by the dominant carrier, NTT.

Interconnection is to telecommunications what a toll booth is to a highway. In Japan, not only does NTT control both the toll booth and the highway, but NTT owns the trucks that operate on the highway. It is impossible for a company to compete with NTT if NTT is allowed to set the toll fare, i.e., interconnection rates, at a level higher than the retail price NTT charges its own customers. By allowing NTT to charge such high interconnection rates, Japan has effectively squeezed competition out of the local market.

Solution: Japan has agreed on a standard for setting rates that should ensure that competition is possible. We expect that NTT's next interconnection tariff (expected to be approved by early next year, but effective retroactive to April 1, 1999) will incorporate overall rate declines of hundreds of million of dollars and local interconnection rates reduced to well below retail rates, so that competitors have an opportunity to both earn a profit and gain market share.

Since the relationship between retail and interconnection rates relates to Japan's WTO obligations to safeguard competition, the United States will henceforth review the proposed tariff in light both of the measures agreed to under the Enhanced Initiative and Japan's WTO obligations.

NTT DoCoMo interconnection

Problem: In the wireless (cellular) market segment, NTT DoCoMo has 20 million customers (and 60% market share). Connecting to NTT DoCoMo is essential for any new entrant in Japan's telecommunications market. The rates, terms and conditions of interconnection dictated by NTT DoCoMo have posed an enormous burden on competing carriers, both foreign and domestic. This is most evident in the price charged for interconnection, which, at up to 25 cents a minute, is clearly not cost based. (Note: retail customers in the U.S. can get nationwide wireless service now for as little as 10 cents a minute, and interconnection with other carriers is typically priced below a penny, less than 1/25th that charged by NTT DoCoMo).

Solution: Japan has agreed to ensure that NTT DoCoMo offers other carriers interconnection rates that are based on the real costs NTT DoCoMo incurs in modifying its facilities to permit competitors to connect. NTT DoCoMo will no longer be permitted to shift non-related costs onto its competitors in the form of exorbitant interconnection rates. Furthermore, if by FY 2000 problems persist, Japan will consider subjecting NTT DoCoMo to mandatory and stringent interconnection obligations. These measures should save competing carriers tens of millions of dollars in interconnection fees.

Streamlined interconnection

Problem: Presently, carriers wishing to enter the Japanese telecommunications market must separately engage in laborious, time-consuming and expensive negotiations with numerous carriers in order to offer their customers the ability to connect to customers of those carriers offering service in Japan

Solution: Henceforth, carriers will be able to use the services of an interconnection “clearinghouse” which performs an intermediary function of interconnecting with other carriers. This will dramatically speed market entry and ensure that Japan’s consumers reap the benefits of competition.

Network Flexibility

Problem: New entrants seeking to build out telecommunications networks in Japan have long been stymied by Japan’s rigid interpretation of how networks should be established. Carriers could choose from essentially three models—a resale model, a fully-owned model, or an interconnection model—but were hindered from flexibly combining elements from each alternative. The development of new technology, new business models, and the persistence of Japan specific-problems has placed a premium on expanding such options. In advanced markets, carriers can lease various elements of a network to create the most efficient competitive alternatives. For example, leasing optical fiber with electronics, fiber without electronics, or even an individual optical “wavelength” to carry a communications signal. In most competitive markets, regulators have seen such flexibility as key to developing maximum competitive opportunities. To date Japan has lagged greatly in allowing such innovative strategies.

Solution: Japan has agreed to permit carriers to enter into flexible network arrangements based on business needs, and not according to the rigid concepts of regulators. To facilitate the development of flexible networks, by the end of 1999, Japan will specify precisely all of the terms and conditions carriers will need to consider in concluding such arrangements. These measures will greatly increase the transparency of Japan’s telecommunications regulatory system and will have an enormous impact on bringing innovative technologies and business models to Japan.

Rights of Way

Problem: Difficulties in obtaining timely, cost-based access to rights-of-way has been one of the major impediments to building out competitive telecommunications networks in Japan. The unwillingness of Japan to confront this problem has ensured that incumbent operators enjoy enormous advantages. Allowing NTT, the electrical utilities or other holders of critical facilities to dictate to competitors the terms and conditions for permitting access to their network is analogous to allowing the operators of a highway to determine which trucking companies can use its highway. Just as it would be unthinkable, anticompetitive, and socially unacceptable to deny a trucking company access to a highway and thereby force it to build its own highway system, it is equally so for telecommunications firms. As such, it is absolutely essential that Japan institute rights-of-way rules which facilitate competitors' access to NTT's network.

Solution: Last December, in line with Japan's Birmingham commitments, major holders of rights-of-way agreed to develop voluntary plans for providing access to third parties. These plans were published in March. These plans will increase the transparency of the rights-of-way regime in Japan. In this year's report, Japan has agreed to evaluate the effectiveness of these plans and will review the need for additional measures, such as mandatory rules, this fiscal year.

Access to International Cable Landing Stations

Problem: Carriers seeking to compete in the international telecommunications service market have long sought expanded access to the international cable landing stations—the location where undersea cables are connected to land-based lines. Competing carriers often want to use their own lines, leased lines, or equipment that can be installed in the landing station to provide more efficient service. In short, competing carriers want to minimize their dependence on the cable landing station owner, which has the ability and incentive to overcharge for access and restrict use of more efficient equipment.

Solution: Where carriers encounter difficulties from carriers such as KDD which control cable landing stations, Japan will offer arbitration procedures to ensure fair access.

Cable TV

Problem: Cable TV has been an important vehicle for access to both the content and communications market in Japan. As in the United States, combining cable TV with telephone service is seen as one of the most viable strategies for bringing competition to the residential telecommunications market.

Solution: Japan has agreed to take two market-enhancing steps: 1) opening up Cable TV from thirty-three percent to one hundred percent foreign investment; and 2) ensuring that NTT does not abuse its control of fiber optic cable reaching residential customers to distort competition in the cable TV/telephony market.

Power Main Signaling

Problem: Innovative technologies now employed in the U.S., Canada and Europe permit firms to use their internal electrical wiring systems for communications purposes, e.g., for monitoring and controlling electrical and electronic equipment. Restrictions on the use of such technology in Japan has deprived Japanese firms of the benefits of a significant technological development pioneered in the United States – technology which has proved its value in enhancing energy efficiency, inventory management, and which has enormous potential as a platform for electronic commerce.

Solution: Japan has agreed to propose new regulations by mid-year which will permit the use of this innovative technology in Japan.

MEDICAL DEVICES AND PHARMACEUTICALS

U.S. firms, world leaders in development of new and innovative pharmaceuticals and medical devices, have captured 12 percent of Japan's \$64 billion pharmaceutical market and 30 percent of Japan's \$20 billion medical devices market. However, continued over-regulation in this sector has hindered the introduction of innovative, cost-effective U.S. products into Japan's market, and prevented a large number of Japanese patients from receiving potentially life-saving treatments. Japan faces the challenge of maintaining quality universal health care for an aging population while it seeks to contain overall health care costs. As the world's second largest market for medical devices and pharmaceuticals, Japan's plans to deregulate and reform this sector are of paramount interest to the United States. Japan has agreed to take important regulatory measures under the second year of the Enhanced Initiative to address key U.S. concerns in this sector.

Pharmaceuticals

Problem: U.S. pharmaceutical companies invest hundreds of millions of dollars each year in leading-edge research to develop new drugs and treatments. Vigorous competition in the pharmaceutical industry has resulted in an explosion of new more effective treatments for a broad range of illnesses, which have dramatically improved patient care and outcomes. Incredibly, 80 percent of the latest, most effective drugs available in other developed markets, are not available in Japan. For example, Japanese patients do not currently enjoy access to a new innovative drug proven to lower costs, shorten hospital stays, and reduce mortality associated with heart attacks, a major health concern given Japanese rapidly aging population. In the U.S. alone, the costs savings from the use of this drug amounts to \$2 billion-a-year.

Solution: As a result of this year's negotiation, Japan agreed to abandon its intention to implement a reference pricing proposal, a non-market based system for health insurance reimbursement for drug expenses that has failed in other countries when adopted and which we believe would unfairly disadvantage U.S. firms. Japan agreed instead to recognize the role of the market, as well as the value of innovation, as it continues to study pharmaceutical pricing reform. Under this agreement, Japan will not be able to arbitrarily deny U.S. and other innovative manufacturers fair

compensation for bringing their latest and most effective products to the Japanese market. Japan will assure that the U.S. pharmaceutical industry will have meaningful input into Japan's reform process as new proposals are developed. The United States will continue to work with Japan to ensure that the process for developing any future reforms of the pharmaceutical pricing system is transparent and recognizes the value of innovation.

Medical Devices

Problem: Under Japan's health insurance reimbursement system, most U.S. manufactured medical devices fall under the "by-function pricing system." This system places a product newly introduced to Japan into a reimbursement category of like products and assigns a reimbursement price based on products already in the market. By making comparisons with older less advanced products, the system often assigns artificially low reimbursement prices for advanced medical devices that offer superior abilities and functions. A transparent and expedient process to create new reimbursement categories tailored to today's technologies is urgently needed in Japan.

Solution: Japan has agreed to develop and implement procedures to reform the by-function system simultaneously with other reforms within FY 2000. Manufacturers will then be able to request that a new category be created, within a predictable process, that will appropriately reward advanced medical devices that offer superior functions.

Regulatory Improvements

Problem: While new drug approvals take 12 to 18 months in the U.S., they commonly take about 40 months in Japan. As medical devices have short product cycles (typically 2-3 years), even short delays in receiving approval have significant market access implications. Such delays cause cost burdens not only on pharmaceutical and medical device companies but also on the Japanese health care system. In addition, U.S. suppliers have long confronted lengthy delays and seemingly arbitrary treatment from Japanese regulators.

Solution: Last year Japan agreed to shorten the approval processing period for new drug applications to 12 months by April 2000. Building on this progress, Japan has agreed in this year's report to specific steps to improve the approval processes for pharmaceuticals and has agreed to expand these procedures to cover medical devices. Furthermore, Japan agreed to ensure that regulatory agencies will not be allowed to arbitrarily alter decisions once made, and to require that evaluation standards, requests for information, and questions be put in writing, making regulators more accountable. In addition, rather than having to rely on go-betweens, as is currently common, applicants will be able to communicate directly with reviewers throughout the approval process.

Problem: Japan's limited acceptance of foreign clinical data for approval of pharmaceuticals and medical devices creates time and resource burdens on U.S. firms by forcing them to repeat in Japan clinical trials already completed abroad.

Solution: Under the first year of the Enhanced Initiative, Japan committed to greatly expand acceptance of such data by, for example, introducing of the International Conference on Harmonization Guidelines, which it has done. Building on last year's progress, Japan will now further expand the acceptance of foreign clinical in the medical device and pharmaceutical approval processes to include all foreign clinical data that meets, or are equivalent to, Japanese or International Conference on Harmonization Good Clinical Practice guidelines. These steps should greatly reduce the need for U.S. firms to repeat clinical trials in Japan. In addition, Japan will no longer require the publication or presentation of clinical data as a prerequisite for use. The removal of this regulation will allow faster compilation of applications and also improve IPR protection of costly clinical trail data.

Problem: In Japan getting a drug or medical device from the manufacturer to the patient is a two-step process. First, the product must be approved for use in Japan, then it must be assigned an official price for reimbursement under the national health insurance system. Only when both steps are completed does the drug or device become available for use in Japan. While Japan has expanded the use of foreign data in the approval process, requirements for clinical data produced in Japan in the reimbursement process currently results in significant delays in getting new medical devices to market.

Solution: Japan has agreed to broaden the use of foreign clinical data to include the medical device reimbursement process. Japan agreed to improve the transparency of its medical device reimbursement system by issuing requirements in writing and allowing firms to voluntarily engage in pre-filing consultations with Japanese regulators so that applicants can design foreign clinical trials to produce as much acceptable data as possible in one trial. These changes should further increase access to Japan for U.S. companies who are currently the primary suppliers of innovative devices to the Japanese market, including all implantable devices such as pacemakers. U.S. firms supply about 90 percent of the Japanese market for pacemakers.

Nutritional Supplements

Problem: Nutritional supplements, including vitamins, herbs, minerals, other dietary products, have traditionally been classified as drugs in Japan and, as a result, have been subjected to severe regulatory restrictions. Largely because of these restrictions, U.S. firms have only gained about a 7 percent market share in Japan, or about \$438 million of Japan's estimated \$6 billion nutritional supplements market.

Solution: Japan has agreed to promote the liberalization of nutritional supplements by treating such products as foods, to the greatest extent possible. This will significantly lower the regulatory burdens on manufacturers of nutritional supplements, and thus speed market entry.

HOUSING

Problem: Japan has the world's second largest housing market. U.S. manufacturers supply about \$1.5 billion of Japan's \$42 billion residential building materials sector. The measures in this year's Second Joint Status Report will make it easier for American exporters of building materials and systems to participate in this vast commercial frontier. Because they will reduce the cost and increase the quality of Japanese residential construction, the measures should contribute to the revitalization of Japan's housing sector. More housing means more consumer spending: a recent Bank of Japan study reported that a Japanese family will spend an average of more than \$16,000 on durable household goods during its first year of occupancy in a newly-bought home. Housing starts in 1998 fell to their lowest level in 14 years. This decline has hurt American exporters. U.S. wood products exports to Japan plunged in 1998 by almost \$700 million (60 percent) from the level achieved only two years earlier.

Solution: Measures agreed to this year could increase annual U.S. exports by as much as one billion dollars. They cover a diverse range of issues from testing laboratory accreditation to structural plywood standards. All of these measures build on the Enhanced Initiative's overriding themes of regulatory restraint, transparency, and use of performance-based standards.

Some measures agreed to this year build on earlier measures contained in the First Joint Status Report by adding specificity to or deepening the extent of reforms. For example, Japan has accelerated its plan to implement performance-based standards for three-story, multi-family wood housing in urban residential areas from Japan Fiscal Year 2000 to May 1, 1999. This will create enormous opportunities in a sector where U.S. firms excel. The adoption by Japan's Ministry of Construction of a "Public Comment Procedure" also goes far beyond the more general transparency measures made at Birmingham. This will establish a public process through which U.S. building materials suppliers can participate for the first time in the formulation and implementation of revisions to Japan's Building Standards Law, the cornerstone of Japan's national housing policy, and associated regulations.

In addition, the United States and Japan have agreed to work cooperatively to expand the market in Japan for U.S.-style building materials and methods through a series of jointly sponsored seminars. Finally, Japan has agreed to disavow discrimination against imported products in its housing programs.

ENERGY

Problem: Japan's energy costs, which are the highest in the industrialized world, are a significant burden to Japanese industry and consumers. Japan's high electric utility rates, which are about three times those in the United States, drive up business costs and raise the cost of living for Japanese citizens. Japan is working to reduce its energy costs and is currently taking steps to introduce competition in its nearly \$300 billion energy sector. The United States and Japan agreed last year to establish a working group under the Enhanced Initiative to support this deregulation effort and to address specific market access barriers of concern to U.S. companies in the Japanese market. U.S. firms are globally competitive in this sector and the experience they have gained capitalizing on opportunities created by the energy deregulation process in the United States positions them well to compete in the Japanese energy sector and to help advance the Japanese deregulation effort.

Solution: During this first year of the energy working group under the Enhanced Initiative, the Japanese Government agreed to implement a variety of concrete deregulatory measures, which we expect to generate tangible benefits for U.S. firms.

Japan agreed to amend its Electric Utility Industry Law to shift from a permit and approval system to a notification system for construction or upgrading of all power generating facilities. Previously, a company seeking to expand its generating capacity, which is faster and less expensive than building new facilities, would have to complete a lengthy and complicated process to obtain Japanese Government approval for the expansion. This amendment will simplify that process, thus encouraging the development of new generating capacity. Moreover, it will dovetail with steps the Japanese Government is taking to open its \$150 billion electric utility sector to competition. These developments will serve to increase competition in Japan's electric utility market, create new opportunities for U.S. and other globally competitive energy firms, and lower Japanese electricity costs.

Japan also has agreed to simplify regulations and work toward harmonization of various Japanese standards with international standards for energy-related equipment, such as turbines, compressors, and standby generator sets - equipment in which U.S. companies are particularly competitive. These changes will eliminate the need for U.S. firms to duplicate expensive testing procedures in order to meet unique Japanese standards and will speed up delivery times to customers.

In addition, Japan agreed to work toward the harmonization of its standards regarding self-serve gas pumps with international standards and to make other related regulatory changes. To lower gasoline prices, Japan began allowing the operation of self-service gas stations in 1997, but so far relatively few self-service stations have been established. The measures Japan has agreed to take will ease the costly and time-consuming process required to obtain approval for installing these pumps. These changes will encourage U.S. firms, which have long experience in the self-service

market, to enter the Japanese market, lower costs and speed service for the benefits of Japanese customers.

FINANCIAL SERVICES¹

Problem: Japan's pool of individual and institutional savings – valued at some \$10 trillion – is the largest outside the United States. The Japanese Government's proposed "Big Bang" liberalization of its financial services industry (which built upon the undertakings in the U.S. – Japan 1995 Agreement on Measures Regarding Financial Services) should substantially improve the ability of foreign financial services providers to reach customers in most segments of the Japanese financial system.

Solution: Among important measures being taken under the "Big Bang" initiative is the liberalization of securities derivatives, easing the registration process for new securities companies, the promotion of a more vigorous asset-backed securities market, and a sharp expansion in the scope of financial activities and products allowed to banks and securities firms, including investment trust (a mutual fund) products. In addition, stock options have been introduced, and brokerage commissions are to be fully liberalized.

The scope of activities allowed to banks and bank subsidiaries have been expanded greatly. Investment advisory companies will be allowed to grant discretionary authority to other fund managers, and the transfer of assets between fund managers has been greatly simplified. A new and more flexible scheme to allow private fund managers access to public pension funds is being developed. Perhaps most important, accounting and disclosure rules are being enhanced, including a switch to consolidated accounting.

The Financial System Reform Law, which incorporates most of the measures in the reform, took effect on December 1, 1998. While seeking additional specific rule changes, the United States² is encouraging the full program of liberalization be carried out within or before the proposed schedule, and that the implementing regulations and ordinances be developed in a clear and transparent manner with provisions for public comment.

¹ The Department of Treasury and the Ministry of Finance are responsible for the development and implementation of measures relating to deregulation of Japan's financial services sector. Their efforts, an important component of the Enhanced Initiative, are centered primarily around the implementation of the U.S.-Japan Financial Services Agreement and Japan's "Big Bang" financial sector deregulation program.

DISTRIBUTION

Retail Distribution

Problem: Japan's closed and inefficient distribution system is a significant market access barrier to U.S. firms across many sectors, including glass, paper, and film. The Large-Scale Retail Store Law (LSRSL) has been a significant impediment to the establishment, operation, and expansion of large retail stores. Under the law, gaining approval for construction of a new large retail store was lengthy and uncertain, and stores were often given strict limits on floor space, operation hours, and number of days the store could be open. These restrictions severely impeded market access for foreign goods as large stores tend to carry greater proportions of imported products.

Last year, Japan repealed the Large-Scale Retail Store Law, thus eliminating supply-demand considerations in decisions regarding the establishment or expansion of large-scale retail stores. A new law, the Large-Scale Retail Store Location Law (*Daiten-Ricchi Ho*), provides that the establishment or expansion of large stores can only be evaluated on the basis of their impact on the local environment, e.g., traffic, noise, parking, and garbage removal. Local governments will be given the authority to implement the new law. Smooth, fair implementation of the new law will significantly ease restrictions on U.S. companies opening and expanding large stores in Japan's \$1.5 trillion plus retail market and improve access for a wide variety of U.S. consumer products.

This devolution of jurisdiction over the establishment of large retail stores creates the potential for local authorities to use the new law to protect local commercial interests in the guise of environmental preservation. Furthermore, if interpretation of the law were left to local governments, large-scale retail store operators could face the daunting task of having to adopt their business plans and activities to countless unique local standards - thus negating any increase in economic efficiencies from this reform.

Solution: Japan has agreed to establish nationally applicable guidelines regarding environmental factors, such as traffic and noise, for use by large-scale retail store operators. These guidelines will also establish detailed nationally applicable criteria for use by local governments - thus ensuring predictability in the review process for new large stores. To ensure that the new law is responsive to the needs of all parties, Japan agreed to solicit public comments in developing cabinet orders, ministerial ordinances, the guidelines, and other measures to implement the *Daiten-Ricchi Ho*. These implementing measures will prescribe all of the requirements and the procedures that local governments and store openers will be required to follow with regard to the establishment or expansion of large-scale retail stores.

In addition, MITI has agreed to closely monitor local governments' implementation of the law to ensure that its purpose is not impeded. Importantly, MITI has pledged to actively facilitate

resolution of complaints from any interested party regarding the application of the law, including giving technical advice and recommendations to local governments.

City Planning Law

Problem: Revisions to the City Planning Law in 1998 could be used by local governments to establish zoning restrictions aimed at unfairly restricting the establishment of large stores.

Solution: Japan has pledged to ensure the transparent and fair application of this law by local governments by enshrining public participation in the application of the City Planning Law. Specifically, local governments will be required to hold public review and hearings on proposed zoning designations, and local governments will be held accountable to ensure that their decisions are objective, transparent, and fair.

Customs/Warehousing/Freight Forwarding

Japan will undertake measures to expedite customs clearance processing, which remains slow and cumbersome by international standards, thus raising costs for U.S. exporters and Japanese customers. Japan will also introduce a maritime container cargo system to expedite the clearance of goods arriving by ship, complete a study on linking the customs administration's and Transportation Ministry's computer systems, and support multilateral efforts to promote the use of harmonized, simplified and streamlined cargo processing systems. Japan has also agreed to liberalize entry and the fare and fee systems in the trucking, warehouse, and freight forwarding businesses.

COMPETITION POLICY

In addition to addressing deregulation in specific sectors, the Enhanced Initiative contains a significant structural component, including competition policy. The United States believes that competition ought to be the central organizing principle of the Japanese economy and active deregulation is critical to making this principle a reality. Instead of competition-restricting regulations, market forces should govern business activities in Japan, in keeping with the Obuchi Government's goal of achieving "a more flexible economy driven by the market.". Furthermore, vigorous Antimonopoly Act enforcement is critical to preserve and expand the benefits of deregulation. Robust competition policy and deregulation work hand-in-hand in fostering free and open markets.

Competition Policy Advocacy

Problem: "Competition policy advocacy" is increasingly recognized by many countries as being an important aspect of the work of competition agencies. The idea is that competition agencies

should not only enforce the law but also should *advocate* policies to engender competition, which will ensure that markets are free and open.

Solution: This year's Joint Status Report marks the first time that the Japanese government has agreed to take proactive steps under competition policy advocacy, and thus represents an important development in broadening Japan's competition policy efforts. Specifically, Japan will work with the private sector to create a model Antimonopoly Act Compliance Program for firms; use various fora, including public hearings, to actively address deregulation and competition policy issues; review business entry regulations and "supply/demand adjustment" regulations and, in appropriate cases, propose removing such regulations; and review competition-restricting regulations on the central and local government level and propose abolishing or revising such regulations.

Private Remedies

Problem: In Japan, there is no legal right for an injured party to bring an injunction against a firm to stop it from violating the Antimonopoly Act, and it is very difficult for an injured party to collect monetary damages (only 11 cases have been brought since 1947) against a violator of the Antimonopoly Act. For more than ten years, the United States has argued that Japan should change this system to give private parties increased powers to enforce the law, as occurs in the United States and Germany.

Solution: Japan has agreed to take steps toward fixing this problem. The JFTC agreed that its study group on this problem will issue its report by December 1999 at the latest. The United States expects that this will allow sufficient time to prepare any new legislation, which the study group may recommend, by next March, at which time the Japanese government agreed to reach a conclusion on this long-standing issue. Introducing a private injunction system and liberalizing the current private damage action system for alleged violations of the Antimonopoly Act will give both Japanese and foreign firms the ability to challenge anticompetitive activities on their own.

Anticartel Enforcement

Problem: Busting up cartels is at the heart of Antimonopoly Act enforcement -- it is important because it keeps markets free and open. Japan is one of the few countries which considers certain violations of the Antimonopoly Act to be an "economic crime" but historically criminal enforcement has been rare. There have only been five criminal cases since 1990 in Japan.

Solution: Recognizing the need to improve this situation, under the Enhanced Initiative the JFTC agreed to continue to direct its investigatory resources toward tackling these types of problems, and will actively file criminal accusations with the Prosecutor's Office. The JFTC will also strengthen its investigatory powers by improving training and boosting the technical expertise of its staff, and improving investigation procedures.

Bid Rigging

Problem: Many foreign firms have difficulty in winning contracts on public works projects in Japan because of anticompetitive business practices that block them from bidding.

Solution: The Ministry of Construction has agreed to amend its Bidding Instructions to make clear to firms that they cannot consult with competing firms about prices when bidding on a project. The Ministry of Construction's changes to its Bidding Instructions will put Japanese firms on notice that they should not engage in these types of activities.

TRANSPARENCY AND OTHER GOVERNMENT PRACTICES

Public Comment Procedures

Problem: Foreign firms have long been disadvantaged by the lack of transparency in the Japanese regulatory system. As outsiders to the system, foreign firms lack access to the timely, detailed information regarding regulatory matters commonly enjoyed by their Japanese competitors. As a consequence, the United States has long pressed the Japanese Government to make its administrative procedures and practices more open and transparent.

Solution: As a direct result of the persistent U.S. urging within the context of the Enhanced Initiative, Japan introduced new administrative procedures which can significantly change the way it develops regulations and provide new avenues for participation by the business community in the Japanese regulatory system. On April 1, the Japanese Government introduced "Public Comment Procedures for Formulating, Amending or Repealing Regulations" (*Kisei no Settei matawa Kaihai ni kakaru Iken Teishutsu Tetsuzuki*). These procedures require ministries and agencies to publish proposed regulations, invite the public to comment on them and take the public comments into account when they finalize the regulations. Such procedures have been a cornerstone of the U.S. regulatory system for more than 50 years.

These public comment procedures should make Japan's regulatory system more transparent, accountable and responsive to the public.

The U.S. Government will monitor closely the Japanese government's use of these procedures, particularly in light of U.S. concerns that the extensive discretion given ministries and agencies in applying the procedures could undermine their effectiveness. It is essential that the business community take advantage of the new system by monitoring entities' regulatory plans and fully participating in the public comment process.

Information Disclosure

Problem: The Japanese government has long denied the Japanese public and other interested parties access to government information relevant to businesses and consumers. Such information has been long available in the United States under the Freedom of Information Act.

Solution: Information disclosure legislation has passed the Lower House of the Japanese Diet, and is expected to be approved by of the Upper House during the current Diet session. Japan will also be taking measures to provide for information disclosure for public corporations (*tokushu hojin*).

Application Approval Processes

Problem: The application and approval processes of the Japanese Government are often unduly lengthy, non-transparent, unpredictable and costly. Foreign firms are at a particular disadvantage given that they often lack the institutional and personal contacts with Japanese bureaucrats that Japanese competitors exploit to navigate this system.

Solution: Japan has reduced the standard processing period for the issuance of licenses, permits and approvals. The standard processing period for 1380 application processes out of 3,602 application processes were shortened, of which the standard processing periods for 580 items were reduced by half. Japan is also reviewing examination standards for the issuance of licenses, permits and approvals in order to clarify and make them specific while minimizing discretionary factors.

Government Procurement

Problem: The U.S. has sought reforms to Japan's procurement practices to ensure that procuring entities give full consideration to the latest, most innovative and cost effective technologies, and not rely solely on price, in making their procurement decisions. This broader procurement approach is referred to as the Overall Greatest Value Methodology.

Solution: Japan amended the implementing ordinance of the Local Autonomy Law in February 1999 to provide for the use of the Overall Greatest Value Methodology by local governments as one method of determining the successful bidder in local government procurement. The amendment was effective immediately. It is anticipated that U.S. suppliers of innovative technologies and goods will directly benefit as a result.